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Attorneys for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION**

**SMITH & NEPHEW, INC. and JOHN O.
HAYHURST, M.D.,**

Civil No. 3:04-CV-00029 MO

Plaintiffs,

v.

ARTHREX, INC.,

Defendant.

**PLAINTIFFS' AMENDED
MOTION FOR SUPPLEMENTAL
DAMAGES AND ADDITIONAL
PRE-JUDGMENT INTEREST**

PATENT CASE

PLAINTIFFS' AMENDED MOTION FOR SUPPLEMENTAL DAMAGES AND ADDITIONAL PRE-JUDGMENT INTEREST

I. LOCAL RULE 7-1 CERTIFICATION

The parties have conferred regarding the issue herein and have not reached an agreement.

II. AMENDED¹ MOTION

In accordance with the Judgment issued by this Court on September 12, 2013 (Dkt. 1114), the plaintiffs, Smith & Nephew, Inc. and Dr. John O. Hayhurst, hereby seek an accounting of supplemental damages for Arthrex's sales of infringing suture anchors for the period from July 1, 2011 through March 31, 2013, which is latest date for which financial information from Arthrex is available, in the amount of 6,775,893.²

In addition, the plaintiffs request an award of pre-judgment interest on such supplemental damages, as well as an award of additional pre-judgment interest on the amounts set forth in this Court's Judgment, for the period through March 31, 2013, in the amount of \$222,303.

The reasons supporting this Motion are set forth in the accompanying Memorandum. The specific calculation of supplemental damages and additional prejudgment interest is set forth in the accompanying Declaration of Richard Troxel.

¹ After the original version of this Motion was filed on September 16, 2013, plaintiffs became aware of additional third party marketing data that changes the calculation of damages somewhat (*i.e.*, it reduces the damages by \$387,856) for the first quarter of 2013. This Amended Motion is being filed to take that new data into account.

² The Court has also entered an Amended Order of Permanent Injunction (Dkt. 1122, issued September 18, 2013), pursuant to which Arthrex must stop selling the infringing anchors and recall infringing anchors that are in the field. As soon as all of the financial data from those events are reconciled, the plaintiffs intend to file a further motion for a final accounting of supplemental damages and interest.

DATED: September 26, 2013

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